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COMMISSIONER

*The Commonwealth of Massachusetts*  
*Department of Revenue*  
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September 25, 1984

You inquire about the application of the sales and use taxes to purchases of items that will be incorporated into or used in connection with a waste-processing plant ("Processing Plant") and a steam and electricity generating plant ("Generating Plant") that will be operated by ("Operator"), a Massachusetts limited partnership of which your client, is general partner.

The two plants will be used to convert refuse to energy in the following manner.

Municipal and commercial refuse will be brought to the Processing Plant in trucks, weighed and dumped into an enclosed tipping area constructed of corrugated steel. Front-end loaders will carry the refuse to conveyors, which will deliver it to shredders for reduction to smaller pieces. From the shredders, the refuse will pass to a separator for removal of noncombustible ferrous metals, and then to a trommel (i.e., a rotary screening device) for removal of noncombustible grit, glass and oversized materials. The ferrous metals will be sold, and the other noncombustible materials will be trucked to a land fill.

The processed refuse will be stored at the Processing Plant in a corrugated steel structure.

Tractor trailer trucks will transport the processed refuse over the road from the Processing Plant to the Generating Plant, a distance of about seven miles. At the Generating Plant the processed refuse will be received in

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a corrugated sheet metal shed. Front-end loaders will carry it from the shed to the waste-feeding system of the Generating Plant, which will consist of surge bin belt feeders and a run-around conveyor system, and which will convey the refuse to the Generating Plant's boiler, where it will be burned to produce steam.

The flue gases from the boiler will pass through an electrostatic precipitator for cleaning, and out through a stack. Some of the steam from the boiler will be sold to industrial and residential customers for use in kind. Some will be piped to an existing powerhouse and used to generate electricity, which will be sold to industrial customers and to Power Company.

Residual ash from the boiler will be trucked to the land fill.

The particular items about which you inquire are the following: (1) Items incorporated into or used at the Processing Plant: the trucks that will bring in the refuse, the enclosed tipping area, the scales on which the refuse will be weighed, the front-end loaders, the conveyor system, the shredders, the ferrous separator, the trommel, the enclosed storage area, dust collection equipment, and electrical equipment used to control the operation of the Processing Plant; (2) The tractor trailer trucks that will transport the processed refuse from the Processing Plant to the Generating Plant; and (3) Items incorporated into or used at the Generating Plant: the waste receiving shed, the front-end loaders, the waste-feeding system, the boiler, burners and other fuel oil equipment, flues and ducts, boiler tubes, fans and auxiliary equipment, a corrugated sheet metal enclosure to be built over the boiler to protect it and related equipment from the elements, structural steel and supports which will be covered by the enclosure, the electrostatic precipitator, the trucks that will carry the residual ash to the land fill, an oil tank containing fuel oil to be burned when starting the boiler and when the boiler is under repair, and "certain miscellaneous equipment."

The ("Contractor A") will build the Processing Plant and install part of the waste-feeding system at the Generating Plant. ("Contractor B") will build the rest of the Generating Plant.

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Contractors A and B will purchase the items incorporated into and used in connection with the plants from vendors within and without Massachusetts. They will transfer the plants, together with the front-end loaders and the trucks ("Vehicles") to the Company ("General Contractor"), which will be responsible for supervising construction and testing of the plants. The General Contractor will transfer the plants and the vehicles in turn to ("Owner"), a Massachusetts general partnership formed to finance the project. The Owner will lease the plants and the vehicles to the Operator. The lease will be for an initial term of 25 years, with the Operator having options to extend. The Operator will have complete control of the plants during the lease term, but the Owner will enjoy the federal tax benefits associated with their ownership.

The sales and use taxes are imposed with respect to retail sales of tangible personal property by any vendor (G.L. c. 64H, § 2; G.L. c. 64I, § 2). "Sale at retail" is defined in Section 1(13) of Chapter 64H as a sale of tangible personal property for any purpose other than resale in the regular course of business.

A contractor who purchases materials from a retailer for use in building construction is generally considered the consumer of the materials and not a purchaser for resale for sales and use tax purposes. Seltzer and Co., Inc. v. State Tax Commission, ATB Docket Nos. 68886, 68887 (1975), aff'd sub nom. Ace Heating Service, Inc. v. State Tax Commission, 371 Mass. 254 (1976); Salem Glass Co. v. State Tax Commission, ATB Docket No. 60903 (1974); State v. J. Watts Kearney & Sons, 181 La. 554 (1935); see Town of Saugus v. B. Perini & Sons, Inc., 305 Mass. 403 (1940).

Chapter 64H, Section 6(s) provides an exemption for sales of machinery or replacement parts thereof used directly and exclusively in the furnishing of gas, water, steam or electricity when delivered to consumers through mains, lines or pipes.

Based on the foregoing, it is ruled that:

1. Neither sales nor use tax will apply to the transfer of the plants by Contractors A and B to the General Contractor, to the transfer of the plants by the General Contractor to the Owner, or to the lease of the plants by the Owner to the Operator.

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2. Neither sales nor use tax will apply to purchases of the conveyor system for the Processing Plant, the shredders, the ferrous separator, the trommel, the dust collection equipment, or the electrical equipment used to control the operation of the Processing Plant.

3. The lease by the Owner to the Operator of all of the trucks, and of the front-end loaders used to carry raw refuse to the conveyors at the Processing Plant will be subject to the sales tax. The lease of the front-end loaders used to carry processed refuse to the waste-feeding system of the Generating Plant will not be subject to tax. Contractors A and B, the General Contractor, and the Owner each may give a resale certificate (Form ST-4) in lieu of paying a tax on their purchases of the vehicles, provided that they are registered as Massachusetts vendors.

4. Contractor A's purchases of the scales, and the building materials from which the enclosed tipping and storage areas are to be built, will be subject to the sales or use tax.

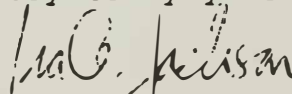
5. Contractor A's purchase of parts for the waste-feeding system at the Generating Plant will not be subject to the sales or use tax.

6. Neither sales nor use tax will apply to purchases by Contractor B of parts for the waste-feeding system, the boiler, the burners and other fuel oil equipment, the flues and ducts, the boiler tubes, the fans, or the electrostatic precipitator.

7. Contractor B's purchases of the oil tank and the building materials from which the receiving shed and the enclosure for the boiler will be built (including the structural steel and supports) will be subject to the sales or use tax.

8. Contractor B's purchases of the auxiliary and "miscellaneous" equipment will be exempt provided that such equipment is an adjunct or attachment necessary for exempt machinery to accomplish its intended function, or a device used or required to control, regulate or operate exempt machinery and directly connected with or an integral part of such machinery.

Very truly yours,



Commissioner of Revenue